

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT SHEFFIELD
HIS HONOUR JUDGE DIXON CP: 14XF1008522

CASE NO: 2024 03520 A4

[2024] EWCA Crim 1664

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 19 December 2024

Before:
LADY JUSTICE ANDREWS
MR JUSTICE BRYAN
MR JUSTICE EYRE

REGINA
v
HARRON RAHMAN

MS BIANCA BRASOVEANU appeared on behalf of the Appellant

A P P R O V E D J U D G M E N T

MR JUSTICE BRYAN:

1. On 22 July 2024, in the Crown Court at Sheffield, the appellant pleaded guilty to the offence of possessing a controlled drug of Class A (cocaine) with intent, contrary to section 5(3) of the Misuse of Drugs Act 1971, and on 30 September 2024 he was sentenced by His Honour Judge Dixon to 26 months' imprisonment.
2. The appellant appeals against sentence by leave of the single judge on the basis that the sentence passed was arguably manifestly excessive.
3. Turning to the facts of the appellant's offending, on 16 December 2021 the appellant was stopped and searched in relation to unrelated matters. When he was stopped, he volunteered to the police that he had drugs in his pocket. Officers recovered from his possession a plastic zip-sealed bag, which contained a foil package containing 59.2 grams of cocaine at a purity of 93 per cent. The estimated street value of the drugs was between £2,400 and £4,700. Also found was a self-sealed bag containing just under 4 grams of cocaine, at 90 per cent purity, with a street value of about £40, and a number of self-seal plastic bags.
4. The appellant was arrested, and his family home was searched. His family directed officers to the appellant's bedroom, where they found a packet containing 9 milligrams of cocaine, some small plastic self-seal bags and several telephones, including "burner phones". One of the telephones seized was found to have drug-related activity on it, which consisted of messages requesting cocaine. An unsent message was found in the outbox of the phone which said, "Fire Sniff" and also a price list. This was an indication that high purity cocaine was available. The appellant was interviewed and provided a 'no comment' interview.
5. The appellant pleaded guilty on a basis of plea ("the Basis of Plea") which was acceptable to the Crown. The Basis of Plea was as follows:

- "1. I was addicted to Cocaine and resided with cracks and heroin users.
2. I was asked by my drug dealer to help him acquire customers in exchange for drugs to feed my addiction.
3. After this arrangement began, he asked me to hold the drugs which were recovered from my address. When doing so he appeared to be in some distress.
4. Shortly after handing the drugs to me, I became aware of local men enquiring as to his whereabouts.
5. I admit there would have been financial benefit to me from not having to pay for cocaine myself."

(emphasis added)

6. It will be seen that the Basis of Plea included that the financial benefit the appellant received was solely receipt of drugs that he would otherwise have had to pay for.
7. The appellant was of previous good character, and there was, before the court, both a letter of remorse from the appellant and a number of character references that spoke of his character in positive terms. There was also a pre-sentence report. The author noted that the appellant expressed remorse and accepted full responsibility for his offending. The appellant identified that at the time of the offence he was struggling significantly with his mental health due to the death of his mother from Covid (the appellant being the family member who authorised that her life support machine be switched off) and the breakdown of his marriage. The appellant had started to use cocaine heavily as a way of dealing with

this. He had initially been able to fund his drug use as he was working two jobs. However, as a result of a decline in his mental health, and the increase of his drug use, he had lost his employment and quickly acquired a drug debt. His drug dealer advised that if he found buyers for the drugs, he would pay off his debt and he would also receive cocaine as payment. Consistent with the Basis of Plea, the appellant was adamant that he had never received any financial payment and was only ever paid with drugs.

8. At the date of interview the appellant had not used cocaine for some time and was receiving treatment for his anxiety and depression. He described the experience as being a salutary lesson to him and one that he would not want to repeat. The author of the pre-sentence report assessed him as a low risk of re-offending and considered that a custodial sentence would not address the underlying issues that has underpinned his offending and would have a detrimental impact upon his mental health. Given the (very considerable) time the appellant had served on bail with no further offending (over 2-and-a-half years), the appellant's acknowledgment of how his mental health had impacted upon his decision making, and the fact that he had sought assistance with this, the author respectfully suggested that the appellant could be appropriately managed in the community with a community-based disposal, with requirements including a Rehabilitation Activity Requirement ("RAR").
9. The sentencing remarks are concise in the extreme, and indeed can be quoted in full in short order:

"You are 32 years of age and were involved in selling Class A drugs in the sense of cocaine. It is accepted by the Crown that you were involved in part to fund your own habit, but your basis of plea makes it clear you were going to make some money from this. The quantity of drugs in your possession was substantial and valued at something like £2,500 to £4,500, give or take. A serious quantity of cocaine. It is said your case falls into Category 3 because it is street level dealing, but that you had a Lesser role in light of the way that you got involved in this. I am not convinced it is Lesser role. It seems to me it straddles somewhere between Lesser and the next one up. But either way, the starting point after trial for the offence itself would have been something like four and a half years it seems to me. But you have no previous convictions and I take account of that and as a result would reduce the starting point down to 45 months. You had the good sense to plead guilty and that will reduce that sentence down to 30 months.

There is then a delay of a good few years without any real explanation and I take account of that, bearing in mind the impact it will have had upon you, and I reduce the sentence to 26 months. The sentence of 26 months means you serve half of that in custody, the rest would then be on licence. 26 months is very close to the level where I can suspend a sentence and I have given careful consideration as to whether this is one of those cases where I can come down a little more to use the gambit of the relevant guideline. But I am afraid, having reduced the sentence in the way that I already have, it seems to me that those who deal in Class A drugs have to understand that prison is going to follow and I can't reduce any lower than 26 months and therefore you will go to prison for 26 months."

10. The grounds of appeal are that the sentence passed was manifestly excessive and in this regard the judge:

(1) erred in not characterising the offending as category 3 street dealing/lesser role (consistent with the basis of plea) and/or

(2) inappropriately increased to the top of Category 3 sentencing range and/or

(3) "completely disregarded all of the personal mitigation" (including having regard to the appellant's mental health) and/or

(4) failed to have regard to the current state of the prison population, as per the principles in *R v Ali* [2023] EWCA Crim 232 and lack of support or rehabilitative assistance within prison and/or

(5) ignored the pre-sentence report and the recommendation therein (the community-based disposal) and/or

(6) failed to have regard to the appellant's lack of further offending in the over 28 months since his arrest, spent entirely on bail, which, it is submitted, is a significant factor strongly telling in favour of the appellant's real prospect of rehabilitation.

11. We consider that there is considerable force in each of these grounds. In this regard there are numerous unsatisfactory features of the sentencing remarks that need to be acknowledged:

(1) They are not true to the Basis of Plea, which far from making it clear that the appellant was going to make some money, are to the effect that there was an "Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)" (a lesser role factor, as acknowledged in the prosecution sentencing note).

(2) They do not address the Drug Guidelines in any sufficient detail or provide adequate reasons as to where the judge placed the offending within the Guideline. On the facts of the present case there was classic Category 3 street dealing/lesser role (with a starting point of 3 years' custody and a range of 2 to 4 years 6 months' custody).

(3) The quantity of drugs was not anything other than that which was typical for street dealing (and less than the indicative quantities if viewed from that perspective).

(4) There was nothing that justified an increase from the starting point, still less to the very top of the range (there being no aggravating features).

(5) The sentencing remarks make no reference whatsoever to the available mitigation and fail to recognise that such mitigation justified a reduction from the starting point.

(6) There is no reference to the pre-sentence report, which contains valuable information as to the circumstances of the offending and the available personal mitigation.

(7) The sentencing remarks ignored the recent recommendation of the author of the pre-sentence report for a community-based sentence.

(8) There is no reference to the Imposition Guideline or the factors militating in favour of suspension, and there was no basis for concluding that the offending was so serious that only an immediate custodial sentence was appropriate, or for making the

generalisation that "those who deal in Class A drugs have to understand that prison is to follow", and the same was in any event not apposite in the context of sentencing this offender having regard to the circumstances pertaining to this offender.

(9) There is no consideration of *R v Ali* and the principles identified therein or recognition that this was a case where the same were apposite, in the context of the appellant's personal circumstances, the long delay, and the fact that there has been no further offending over a 28-month period.

12. We are satisfied that the sentence passed was manifestly excessive, and we are in no doubt that this was due to the flawed approach to the sentencing that is evidenced in the sentencing remarks. In such circumstances, the only appropriate course is to consider the sentencing exercise afresh.
13. This was Category 3 offending/lesser role, with a starting point of 36 months' custody. There are no aggravating factors justifying an increase therefrom. There was strong personal mitigation, as identified in the pre-sentence report, that justified a significant reduction from that starting point to the bottom of that sentencing range (24 months' custody), before 25 per cent credit for guilty plea, to produce a sentence of 18 months' imprisonment. Applying the Imposition Guidelines and having regard (1) to the recommendation in the pre-sentence report, (2) current prison conditions, (3) the lack of offending in the last 28 months, and (4) the realistic prospect of rehabilitation, it is appropriate to suspend such sentence for 2 years, with a Rehabilitation Activity Requirement of 20 days as recommended in the pre-sentence report, and with other appropriate conditions that we will now address.
14. Accordingly, we allow the appeal and quash the sentence that was passed. We substitute a sentence of 18 months' imprisonment suspended for 24 months, effective from today, on the following conditions:
 - (1) During the next 24 months the appellant must not commit any kind of offence anywhere in the United Kingdom.
 - (2) During the same period the appellant must keep in touch with an officer who will be responsible for his case. That officer must be notified if the appellant changes his address.
 - (3) The appellant must comply with the following requirement, namely a Rehabilitation Activity Requirement, whereby the appellant must participate on 20 days in a rehabilitation activity and whilst doing so he must do as he is instructed by or on behalf of the person in charge. The appellant must complete this requirement within 24 months.
15. If the appellant keeps to these conditions, the sentence which has been suspended will not take effect. If the appellant breaks any of the conditions, a court could order the sentence to take effect, in full or in part, or alter it to make it more demanding.
16. Accordingly, and to that extent, this appeal against sentence is allowed.